THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.1151, 2730 and 15677 of 2005

25th July 2006

W.P.No.1151 of 2005:

Between:

Special Chief Secretary to Government &
Chief Commissioner of Land Administration
Andhra Pradesh, Hyderabad and two others.

.. Petitioners.

And

Shaik Sattar, S/o Shaik Mahaboob.

.. Respondent.

And two cases.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.1151, 2730 and 15677 of 2005

COMMON ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

Since all these three Writ Petitions arise out of a common order passed in three different applications filed by the respective applicants, they are taken up together for disposal with the consent of the counsel appearing on either side.

Heard the learned Government Pleader for Services-II appearing on behalf of the petitioners and Sri K. Rami Reddy, the learned counsel appearing on behalf of the contesting respondents/original applicants.

In all these three cases, the facts, which are necessary for disposal of these cases, are that the original applicants filed respective O.As. before the A.P. Administrative Tribunal which under Section 19 of the Andhra Pradesh Administrative Tribunals Act, who are working as Deputy Tahsildars and they seek to assail the

impugned proceedings dated 12.04.1999 in preparing the panel for the year 1997-'98 and also the consequent letter of the even date which was addressed to the respective applicants.

The case of the petitioners is that they have been appointed initially by transfer as Deputy Tahsildars on 09.01.1998 as per G.O.Ms.No.165, dated 22.04.1997 and since they have crossed the age of 45 years, they were given exemption. Accordingly, the District Collector, Khammam prepared the seniority list of Senior Assistants where they have been included and placed at serial numbers and sent the proposals to the Chief Commissioner of Land Administration for inclusion of names of the petitioners in the panel for the year 1997-'98. However, for no valid reason or without any justification, the Chief Commissioner of Land Administration passed over their names on the ground that they did not pass the prescribed departmental test. Therefore, they claim that having regard to the exemption already granted in G.O.Ms.165, dated 22.04.1997, they are entitled for inclusion in the said panel. It is also pointed out that the said G.O.Ms.165, dated 22.04.1997 and also the consequential clarification issued by the Government in U.O.Note dated 22.07.1998 were subject matter before the Tribunal as well as this Court. However, having regard to the principles laid down thereunder, the applicants would be

entitled to include in the said panel. Hence, the applications.

Though no counter affidavit was filed, the petitioners herein contested the applications. However, the Tribunal did not find favour with the objections raised on behalf of the petitioners and ultimately holding that having granted exemption in G.O.Ms. No.165, dated 22.04.1997 and the said orders having become reached finality, the applicants are entitled to be included in the panel for the year 1997-'98. Initially, the Tribunal took up O.A.No.2654 of 1999 which is the subject matter of W.P.No.2730 of 2005 and accordingly allowed the same. Following the said orders, the other two O.A.Nos.2426 and 2334 of 1999 were also disposed of on the similar directions. Hence, these Writ Petitions.

The main submission made on behalf of the petitioners is to the effect that admittedly none of these applicants have passed the concerned departmental test as prescribed under Rule 5 (C) of A.P.R.S.S. Rules for being promoted as Deputy Tahsildars by grant of exemption under G.O.Ms.No.165, dated 22.04.1997 and accordingly the Collector proposed their names for inclusion in the panel for the year 1997-'98 only the ground of exemption. However, the same was not considered by the competent authority since the said G.O.Ms. No.165 is not applicable to the promotion to the post of Deputy

Dahsildar as subsequently clarified by the Circular Memo dated 26.03.1998 and thus their claims were rightly rejected. It is further pointed out that the said *Ad hoc* Rule framed under G.O.Ms. No.165, GA (Ser.C), Department, dated 22.04.1997 has been amended in G.O.Ms.No.225, dtd.18.05.1999 by making applicability of exemption is only once and further to the effect that those who have already got one promotion cannot get benefit for the second promotion. The said later G.O.Ms. 225 was unsuccessfully challenged in this Court and the same was upheld in Writ Petition No.15590 of 2001, dated 01.11.2001. Thus, the clarifications have been issued on 26.03.1998 pointing out that the individual is entitled for exemption from passing of departmental test prescribed in the Special Rules who crosses 45 years of age for getting one promotion only to the next higher post from the post which he was appointed initially. Thereby, re-iterating that once an individual is promoted to the next higher post from the post which he is holding, is not entitled for being promoted to the second higher promotion in spite of crossing 45 years of age. Subsequent to the decision of this Court upholding the G.O.Ms.No.225, even the A.P. Administrative Tribunal also once again disposed of the batch of cases in O.A.No.5564 of 2001, dated 12.03.2004 upholding the G.O.Ms. No.225 on the same lines as that of this Court. In view of the same, the petitioners cannot be extended to any such further exemption or

permission and consequently cannot seek any inclusion. Therefore, the order passed by the A.P. Administrative Tribunal, which did not consider all these aspects, is totally vitiated and has to be set aside.

Considering the submissions made on either side and on perusal of the material available on record, the only point that arises for consideration is as to whether on the facts and circumstances the petitioners are entitled to claim for inclusion of their names in the panel of Deputy Tahsildars for the year 1997-'98 ?

As can be clearly fell down from the above, the undisputed facts are that the original applicants namely the contesting respondents herein who filed the applications, under Section 19 of the A.P. Administrative Tribunals Act before the Tribunal, have been allowed and ultimately they were appointed by transfer as Deputy Tahsildars by giving exemption as per G.O.Ms. No.165, dated 22.04.1997 since they have crossed the age of 45 years. All these promotions were effected in the year 1998 itself and the G.O.Ms. No.165-G.A.(Ser.C) Department, dated 22.04.1997 which reads as follows:

> "The Government Employees who have crossed 45 years of age shall be exempted for passing Departmental Tests prescribed in the Special Rules/Adhoc Rules for the purpose of promotion to the next higher category (i.e.,) promotions/appointment by transfer to a post above the one held by him or her if, they could not pass the same." It means – the concession of exemption is available to an employee for being promoted to a higher post from a post which he is

holding at the time of crossing 45 years of age."

Further, the Government also issued clarification vide Circular dated 26.03.1998 making it clear that the exemption is only for one promotion but not for further promotions. It is also not in dispute that the said G.O.Ms. No.165, dated 22.04.1997 has undergone amendment vide G.O.Ms.No.225, dated 18.05.1999 which reads as follows:

> "Notwithstanding anything contained in the Andhra Pradesh State and Subordinate Service Rules or in the Special Rules or in adhoc rules, the Government employees who have cross 45 (forty five) years of age shall be exempted from passing the departmental tests prescribed in the Special rules or the *Ad hoc* rules for the purpose of promotion to the next higher category i.e., promotion or appointment by transfer involving promotion to a post above the one held by him or her, if they could not get even one promotion after their initial appointment."
>
> Provided that the persons who already got a promotion once where no tests are prescribed for the higher post, the exemption is not applicable to him or her if he or she is to be considered for further promotion to next higher category where tests are prescribed. (This adhoc rule is applicable from the panel year 1997-98).
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> Provided further that the e3xemption is applicable in case of departmental tests or special tests only, where they are prescribed as a pre-requisite for promotion and this exemption shall not be applicable where like technical or academic qualifications are prescribed for promotion to the next higher category of posts.
>
> Provided also that the exemption shall not be applicable for declaration of probation, where passing of departmental tests or special tests is a pre-condition for declaration of probation.

This aforesaid later amended rule was challenged by the employees

in this Court in Writ Petition No.15590 of 2001, dated 01.11.2001 upholding the validity thereof. From the facts as stated above, the petitioners have already given benefit of one promotion as Deputy Tahsildar by extending the exemption on the ground of crossing 45 years of age. Therefore, having thus availed once promotion already, the question of any further promotion or further extension of the benefit of exemption as per the policy as sought to be enunciated under the aforesaid rules cannot be extended. Thus, the petitioners cannot make once again claim for further promotion on the self same grounds at a later stage or for any later promotion or further avenues as such. There is no serious challenge either to the correctness of the aforesaid amended rule nor to the judgment of this Court or that of the Tribunal itself which followed this Court judgment. There is also no serious dispute either in the original application filed before the Tribunal in these cases or even in this Court to raise any other further ground or aspect to stand on any different footing. Apparently all these aspects especially as to the subsequent amended Rule in G.O.Ms. No.225, dated 18.05.1999 and also the same being upheld by this Court and the Tribunal having not been given up for consideration, in the circumstances, it has to be held that the original applicants in all these three cases would not be entitled to such further promotion or any relief

as sought for therein. The entire gamut and the controversy in regard to the claim of the original applicants is squarely covered by not only the aforesaid amended Rule but also the principles as laid down by this Court while upholding the said amended Rule.

In the circumstances, it has to be held that the original applicants have absolutely no such right as vested or other-wise much less an enforceable one to seek such exemption. An attempt has been made to press into the service of the judgment of this Court in **J. PARAVATHALU vs. ANDHFRA PRADESH ADMINISTRATIVE TRIBUNAL, HYDERABAD**[1]. However, in the facts and circumstances of this case, the ultimate conclusion as arrived at therein would not have any bearing in this case. Since there is no question of preparation of panels arises in the present case as could be evident from the peculiar facts of that case. In another judgment reported in **G. AMRUTHA RAO vs. ACHARYA N.G. RANGA AGRICULTURAL UNIVERSITY**[2] which was also pressed into service could not be of any assistance to the respondents/original applicants having regard to entirely different strata in the facts and circumstances therein.

In view of the aforesaid reasons, we are of the view that the orders of the Tribunal are not valid and liable to be set aside.

The Writ Petitions are, accordingly, allowed. The orders passed in O.A.Nos.2334, 2654 and 2426 of 1999 by the A.P. Administrative Tribunal, Hyderabad are set aside. No costs.

B. PRAKASH RAO, J

RAMESH RANGANATHAN, J

25th July 2006.
Chvn.

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[1] 2002 Supp. (1) ALD 430

[2] 1998 (6) ALD 491